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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

K.R.,

Petitioner,

v.

THE SUPERIOR COURT OF
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F064524

(Super. Ct. Nos. 516018 & 516019)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q.
Ameral, Judge.

Parent Advocates of Stanislaus and Hana B. Balfour, for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Robin L. McIver, Deputy County Counsel,
for Real Party in Interest.

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* Before Levy, Acting P.J., Gomes, J., and Kane, J.

K.R. (mother)¹ seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 12-month review hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing² as to her four- and two-year-old daughters, S.R. and F.R. respectively. She contends the juvenile court erred in finding that she was provided reasonable services and that there was not a substantial probability the children could be returned to her custody by the 18-month review hearing. Thus, she asks this court to direct the juvenile court to vacate the section 366.26 hearing and to continue reunification services. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In January 2011, the Stanislaus County Community Services Agency (agency) took then two-year-old S.R. and 11-month-old F.R. into protective custody after investigating a report of drug use, child neglect and possible sexual molestation. At the time, K.R. was living with the children in the home of her mother, Kimberly. K.R.'s adult brother, Richard, also lived there. The caller stated that there was no food in the home and that S.R. was seen looking in the trash for food. When the girls' diapers were changed, their vaginas were red and appeared torn. S.R. was asked who touched her privates and she responded "Richard."

K.R. and Kimberly admitted to the emergency response social worker that they were using methamphetamine. Kimberly said she had been using the drug on and off for 20 years. K.R. and Kimberly said they left the girls in Richard's care about five times a week when they left the residence, but denied that Richard touched S.R. However, K.R.'s girlfriend said there was an incident approximately a month before when S.R. got

¹ We refer to mother and her children by their first and last initials to protect the children's identities. (Cal. Rules of Court, rule 8.401(a)(2).)

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

out of the bathtub, touched her privates and said it hurt. When asked if anyone touched her privates, she stated “Rich did.” Kimberly acknowledged this and said they spoke to Richard and he denied being inappropriate with the children. Kimberly stated that she, K.R. and Richard were molested as children.

This was not the first reported incident of possible sexual molestation concerning K.R.’s children. In June 2010, K.R. contacted the agency, stating that she left then four-month-old F.R. with then 20-year-old Richard. When she returned, F.R. was screaming and K.R. suspected that Richard put something in F.R.’s rectum. The agency investigated and reported that F.R. had a rash but no visible cuts or abrasions. The information was provided to a social worker who was working on another referral concerning the family.

In February 2011, the agency filed a dependency petition on behalf of S.R. and F.R., alleging K.R. failed to protect them. (§ 300, subd. (b).) The petition identified the children’s fathers by first name only and indicated that their whereabouts were unknown. S.R. and F.R. were placed with foster parents, Mr. and Mrs. W.

In March 2011, the juvenile court adjudged S.R. and F.R. dependents of the court, ordered them removed from K.R.’s custody and ordered her to participate in sexual abuse counseling at Parents United and individual counseling and parenting instruction at Sierra Vista Child and Family Services (Sierra Vista). The purpose of the sexual abuse counseling at Parents United was for K.R. to address her childhood sexual molestation. The purpose of the individual counseling at Sierra Vista was for her to address the children’s sexual molestation, including ways to protect them from it. The plan also required K.R. to complete a drug and alcohol assessment and submit to random drug testing and visit the children weekly. The court set the six-month review hearing for August and an interim review hearing for June 2011.

In its interim review report, the agency stated that K.R. completed the steps to participate in some of her services but did not follow through. She completed a drug and alcohol abuse orientation but missed several assessment appointments. As a result, she was still on the waiting list for the program. She attended one meeting of the Parents United Program but did not enroll. She completed an application for individual counseling at Sierra Vista in February 2011 and attended an intake appointment in April, but did not return. When asked about her progress, K.R. told the social worker that she was doing her best but that the court had asked her to do too much and that it was overwhelming.

The agency also reported that K.R. visited the children once a week for an hour and a half. The girls appeared to enjoy the visits but also appeared indifferent to see their mother. When the visits were over they left without incident.

In June 2011, the juvenile court conducted the interim review hearing. According to the minute order of the hearing, the court was “not pleased [with K.R.’s] progress.”

In July 2011, K.R. entered the Nirvana Women of Hope residential drug and alcohol treatment program (Nirvana) and tested positive for methamphetamine. She also began parenting instruction at Sierra Vista. By the end of July, K.R. had a sponsor but was having difficulty sharing in group settings and at Narcotics/Alcoholics Anonymous meetings. In addition, K.R. had not begun sexual abuse counseling at Parents United; however, her drug counselor recommended that she defer it until she was further into the recovery process.

In its six-month status review report, the agency recommended that the juvenile court continue K.R.’s reunification services, however, the agency had concerns. Specifically, it was concerned that K.R. was not sharing in her group sessions and seemed to be going through the motions and that her friends and family were a threat to

her sobriety. Meanwhile, S.R. and F.R. were bonded to Mr. and Mrs. W. who wanted to adopt them.

In August 2011, the juvenile court continued K.R.'s reunification services to the 12-month review hearing which it set for February 2012. However, the juvenile court stated that it was not impressed with K.R.'s performance and that it was not inclined to set a 12-month review hearing. The court set an interim review hearing in November and admonished K.R. that if her progress was not "stellar" that it would terminate her services at that time.

In its report for the November 2011 hearing, the agency described S.R. and F.R.'s behavior in foster care. Initially, they displayed extreme emotional reactions to going to the bedroom and being in bed and would have nothing to do with any male including Mr. W., their foster father. F.R. would pull away from men and cry and S.R. would hide behind Mrs. W. or run away screaming, crying and yelling, "Go away!" As they gained trust, their behavior subsided; however, S.R. began to act out sexually by grabbing female breasts, rubbing her vagina with eating utensils and attempting to insert them into her vagina.

The agency also reported that K.R. completed residential and day treatment at Nirvana and was living at Redwoods, a transitional facility for women, and participating in intensive outpatient treatment. She had a sponsor and was testing negative for drugs. She also completed parenting classes at Sierra Vista and continued to participate in individual parenting sessions and parent/child labs. She began sexual abuse counseling at Parents United in September 2011 and attended all but one meeting due to illness. She still had not begun individual counseling at Sierra Vista to address the children's molestation. Also during this period, the social worker increased visitation to four hours a week and K.R. asked about overnight visitation. The social worker, however, did not recommend it because S.R. had suddenly become incontinent which the social worker

attributed to the increased contact. In addition, S.R. was reluctant to visit and when longer or overnight visits were mentioned, she said she liked to “play with mommy but [didn’t] want to live with mommy.”

In November 2011, another judicial officer presided over the interim review hearing and continued reunification services to the 12-month review hearing.

In its report for the 12-month review hearing, the agency recommended that the juvenile court terminate K.R.’s reunification services and set a section 366.26 hearing to implement a permanent plan. The agency reported that F.R. was beginning to display sexualized behavior. Mrs. W. reported that on one occasion, during bath time, F.R. aggressively attempted to poke S.R.’s vaginal area with a soap crayon. In addition, K.R. was adamant that Richard did not touch the children.

The agency also reported that K.R. actively avoided participating in sexual abuse counseling. In September 2011, at the social worker’s encouragement, she started the newcomers group at Parents United. In late September, she missed the group session and lied about the reason for her absence. She asked Laurie Lopez, her social worker, if she could attend one-on-one counseling instead of sexual abuse counseling at Parents United because she did not like speaking in front of other people. Ms. Lopez told her that she was required to complete counseling at Parents United as well as individual counseling to address the children’s molestation. In December 2011, K.R. completed the newcomers group at Parents United. That same month, she began the Adults Molested as Children (AMAC) group and attended every session. However, the focus of the group was on personal victimization and K.R. was not attending the group sharing session.

The agency opined that K.R. failed to demonstrate the ability to protect the children from molestation and/or sexual abuse. She appeared to be going through the motions of treatment and failed to demonstrate the capacity to provide for the children’s physical or emotional needs.

The 12-month review hearing was continued and conducted in March 2012 as a contested hearing. Several of K.R.'s service providers testified on her behalf. Therapist Lupe Ruelas-French testified that she was contracted to provide individual and parenting counseling for clients of Sierra Vista. She said that the initial referral from the agency authorized K.R. to participate in Sierra Vista's parenting program. K.R.'s attorney introduced the contract service authorization and encumbrance form which authorized it into evidence. Ms. Ruelas-French was assigned to provide K.R. the one-on-one parenting portion of the parenting program and she said that K.R. completed it and "did well." She said she spoke to K.R.'s prior social worker, Kathy Kleinfelder, in August 2011 and she recalled them discussing parenting but not individual counseling.

Ms. Ruelas-French further testified that in February 2012 she received a copy of K.R.'s case plan and a second authorization from the agency to provide K.R. individual counseling. Prior to receiving the case plan, she did not know that the children were removed from K.R.'s custody because they were sexually molested. She said that K.R. would not have received individual counseling without an authorization. She said the focus of her individual counseling with K.R. was protecting the children from possible molest.

On cross-examination by county counsel, Ms. Ruelas-French testified that services do not begin without an encumbrance. She said she sometimes asked the agency for a report so that she could obtain a family history, but operated on a general understanding that there was neglect or endangerment resulting from substance abuse and/or domestic violence. She said that details about the family history and the specific issues of concern were generally disclosed during the one-on-one parenting counseling. She said that if a client mentioned a type of counseling for which she did not have an encumbrance, she would refer the client to the social worker. She said that K.R. did not mention needing individual counseling in 2011 or disclose that the children were removed because of

suspected sexual molestation. She said that information would have been important to know so as to provide K.R. appropriate parenting counseling.

On redirect examination, K.R.'s attorney asked Ms. Ruelas-French who in her experience typically identified the issues to be addressed in counseling. She said that information typically came from the agency. She also testified that clients are not necessarily willing to identify the issues that they need to address. She said it would probably have made a difference in the way she approached K.R. and the issues she discussed with her if she had known that there was concern that the children had been molested.

Carolina Storment, K.R.'s mentor at Redwoods, testified that she oversaw K.R.'s visitation with the children. She described K.R. as being very engaged in visitation and the children as "excited" to see her. She said the children could live with K.R. at the facility and that they could remain as long as necessary.

Rene Pirie, K.R.'s case manager at Redwoods, testified that she met with K.R. weekly to discuss her progress and recovery. She said she made sure that K.R. was meeting with her sponsor, working her steps thoroughly and attempting to attend outside meetings on her own. She said that K.R. was progressing well in her recovery and was working on step 9 of the 12 steps. She said she discussed triggers that could cause relapse with her clients but had not discussed that with K.R. She said that K.R. did not tell her that she had been molested, but also said that was not a subject she would have necessarily talked to her about as her case manager.

Stacy Glover, K.R.'s substance abuse counselor, testified that K.R. finished the 12-week outpatient treatment program and decided to stay for the last component of the program which she said was more intensive and lasted up to a year or longer. In that component, they worked on core issues regarding family, genograms and amends letters to her children. She also testified that K.R. participated in one-on-one counseling and

group sessions. She said that K.R. shared openly in group sessions and believed that she made “great progress” in the program. She further testified that K.R. completed a relapse prevention packet and was able to identify her triggers. She said that K.R. discussed being molested as a child but did not discuss the children’s molestation.

Sandra Santos, K.R.’s parent educator at the drug treatment facility, testified that K.R. had been participating in parenting classes and individual sessions with her since November 2011. She said the parenting classes included a class on sexual abuse during which they discussed red flags, how to protect children, and inappropriate touching. She said K.R. was quiet in class and participated randomly but appeared attentive. She said that during the parent/child lab she conducted, K.R. interacted well with her daughters. On cross-examination by county counsel, Ms. Santos was asked whether K.R. mentioned the children’s sexualized behaviors following visitation. She said she had not and that it would have been good information to have. However, she also testified that it was normal for children to act up after visiting a parent and that K.R. would not have any control over the children’s behavior following visitation.

Laurie Lopez testified for the agency. She said that she took over the case from social worker Kathy Kleinfelder in September 2011. At that time, K.R. was not participating in individual counseling at Sierra Vista. She said that Ms. Kleinfelder logged a conversation she had in April 2011 in which K.R. asked if she had to attend individual counseling for her molestation at Sierra Vista or if she could address the issue in one-on-one counseling as part of drug treatment. Ms. Kleinfelder told K.R. that she would have to inquire. Ms. Lopez said that she first discovered that K.R. was not attending individual counseling for sexual molestation at Sierra Vista in October 2011. At that time, she directed K.R. to speak to her counselor at Sierra Vista about providing that type of counseling. She also followed up monthly to see if K.R. had signed up for the counseling. At some point, K.R. told Ms. Lopez that she was participating in

individual counseling at Sierra Vista for sexual molestation and Ms. Lopez discovered that instead K.R. was participating in AMAC. She said that AMAC consists of group sessions only, not one-on-one counseling. She also said that K.R. was regularly attending but not participating.

Ms. Lopez further testified that she recommended terminating K.R.'s reunification services based on various concerns, including K.R.'s denial that Richard molested S.R. and F.R. Ms. Lopez testified that K.R. adamantly denied that Richard molested them until February 2012 after Ms. Lopez recommended that the juvenile court terminate her services. After that, K.R. suggested that a previous boyfriend may have molested them.

Ms. Lopez was also concerned that K.R. was vulnerable to relapse because her only source of support, Kimberly, was a person with whom she used drugs and because she had not progressed beyond supervised visitation. In addition, Ms. Lopez did not believe that the children could be returned to K.R.'s custody by the 18-month review hearing in July because she was still in denial that Richard may have molested them.

On cross-examination by K.R.'s attorney, Ms. Lopez testified that K.R. could have attended individual therapy at Sierra Vista even without an encumbrance. She explained that if K.R. had made it known at the intake that she needed to attend individual counseling, it would have been brought to someone's attention at that time. She said it was not uncommon to encumber a limited amount of services at the beginning of a case plan so as not to overwhelm a client with many services and tie up funds. She said that it was the social worker's responsibility to make services available to a client, but that it was K.R.'s responsibility to bring it to a service provider's attention when there are multiple services from one provider.

K.R. testified that she believed something happened to S.R. based on her behavior but she did not know if anything happened to F.R. She did not know if Richard molested them but said it could have been him. She said she was never told she needed individual

counseling at Sierra Vista. Had she been referred for it, she would have completed it. She said she had been in individual counseling for several weeks to address protecting her children from molestation. She said that she had learned tools to protect them. For example, she said she would not leave her children with family members but would use child care.

At the conclusion of the hearing, the juvenile court found that the agency provided K.R. reasonable services and that there was not a substantial probability the children could be returned to K.R.'s custody by the 18-month review hearing. The court terminated services and set a section 366.26 hearing. This petition ensued.

DISCUSSION

I. Reasonableness of Services

K.R. contends that the agency's failure to authorize child sexual abuse counseling through Sierra Vista prior to February 2012 was a failure to provide reasonable services. Therefore, she further contends, the juvenile court's reasonable services finding is error and must be reversed. We disagree.

In determining whether reasonable services were provided, the juvenile court considers not only the appropriateness of services offered, but also the extent to which the department facilitated utilization of the services and the extent to which the parent availed himself or herself of the services provided. As a practical matter, one could always argue that the department could have done more or provided better services but that is not the standard. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*)) The standard is whether the services provided were reasonable under the circumstances. (*Ibid.*)

On a challenge to the juvenile court's reasonable services finding, we view the evidence in a light most favorable to the department, indulging in all legitimate and

reasonable inferences to uphold the finding. (*Misako R.*, *supra*, 2 Cal.App.4th at p. 545.) If substantial evidence supports the juvenile court's finding, we will not disturb it. (*Ibid.*) Since K.R. bears the burden of demonstrating error on appeal (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632), she must show that the juvenile court's reasonable services finding is not supported by substantial evidence.

In this case, the juvenile court considered the fact that there was not a specific authorization to Sierra Vista for individual sexual abuse counseling, however found that in the totality of the circumstances the agency provided K.R. reasonable services. In so ruling, the court stated that it was satisfied that K.R. knew that she was required to address the children's molestation in counseling based on her discussions with the social workers and the references to it in the agency's reports. Having reviewed the record, we find it plausible that K.R. may have been confused at times as to how to meet her counseling requirements. However, at least by October 2011, she was specifically directed by Ms. Lopez to talk to her counselor at Sierra Vista, presumably Ms. Ruelas-French, about incorporating the issue of the children's molestation into her individual counseling. K.R. did not bring it to her counselor's attention and lied to Ms. Lopez saying that she did. For whatever reason, K.R. avoided participating in that particular counseling. In addition, K.R. did not disclose that the children were molested and she still doubted whether Richard molested them. Under the circumstances, even if she had been authorized to receive the counseling sooner, there is no reason to believe that she would have participated in it or benefitted from it given her active avoidance and denial.

Further, the case that K.R. cites to support her argument, *In re Alvin R.* (2003) 108 Cal.App.4th 962 (*Alvin R.*), is distinguishable. In *Alvin R.*, reunification depended on a series of events which had to occur in the following order: eight individual therapy sessions for Alvin, conjoint therapy for Alvin and his father, and visitation. (*Id.* at pp. 972-973, 975.) However, the department, in that case, ignored the juvenile court's order

eliminating the eight-session requirement and made no attempt to get Alvin into therapy except to refer him to a therapist with a waiting list. (*Id.* at p. 973.) The appellate court reversed the juvenile court's reasonable services finding, concluding that the department did not make a good faith effort to facilitate the therapy sessions and provide the father reasonable services. (*Id.* at pp. 973, 975.)

Unlike *Alvin R.*, there was not a seriate order to K.R.'s services. Rather, her case plan was designed such that she would participate in them simultaneously. Her inability to do so therefore was not because other services depended on her first receiving counseling focused on the children's molestation, but rather because she failed to take the appropriate steps to initiate it.

That said, however, it was ultimately the agency's responsibility to provide the proper authorization for the counseling and communicate to the therapist the specific nature of the required counseling. The fact that the social worker did not follow through is bothersome, especially since it was unlikely that K.R. would voluntarily pursue counseling to address the children's molestation given her general avoidance of counseling and the painful nature of the subject matter. Nevertheless, given the gravity of the situation, the importance of counseling to her ability to reunify and her understanding that it was a requirement, we must agree with the juvenile court that services were reasonable given the totality of the circumstances.

II. Substantial Probability of Return

K.R. contends the juvenile court erred in finding there was not a substantial probability the children could be returned to her custody by the 18-month review hearing. Therefore, she further contends, the juvenile court also erred in terminating reunification services. We disagree.

The juvenile court has discretion to extend services beyond 12 months if it finds there is a substantial probability that the child will be returned to parental custody and

safely maintained in the home within the extended period of time. (§§ 361.5, subd. (a)(1), 366.21, subd. (g)(1).) In order to find a substantial probability of return, the juvenile court must first find that the parent made significant progress in resolving the problem necessitating the child's removal and that the parent demonstrated the capacity to meet the objectives of the case plan and provide a safe home for the child. (§ 366.21, subd. (g)(1)(B) & (C).)

When the juvenile court's order terminating reunification services is challenged on appeal, our role is to determine whether substantial evidence supports the juvenile court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.) In doing so, we do not reweigh the evidence or draw our own conclusions from it. (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) Rather, we merely determine if there are sufficient facts to support the findings that the juvenile court made. (*Ibid.*) Stated another way, the question on appeal is not whether the juvenile court could have found differently, but whether substantial evidence supports the finding that the juvenile court made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) On this record, we conclude that it does.

In this case, the children were removed from K.R.'s custody in large part because they were sexually molested while in her care and a main objective of her reunification plan was to protect them from sexual abuse. However, after 12 months of services, K.R. had, according to Ms. Ruelas-French, only participated in two individual sessions to address the children's molestation and she was still denying that Richard molested them. In most respects, K.R. was no better equipped to protect the children than she was when they were first removed. Indeed, the juvenile court found that her progress was "limited." Given her limited progress and the depth of the problem, there was no reason to believe that K.R. would have the skills to protect the children and provide them a safe home in the months remaining before July 2012 which marked 18 months from the date

the children were initially removed from her custody. (§ 366.22, subd. (a).) We find no error.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.